IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

WP(C).No. 26084 of 2006(E)

AGAINST THE ORDER IN EA.777/05,778/04INEP.196/04 IN OS.275/1996 of PRL.M.C.KOZHIKODE-I

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PETITIONER:

A.C.KUNHABDULLA HAJI, S/O. KADIRIKOYA,
KODUVALLY AMSOM AND DESOM, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

OTTARAKKIL ABDUL KHADER,
S/O. ASSAIN HAJI, KODUVALLY AMSOM DESOM,
KOZHIKODE TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.26084/2006

APPENDIX

PETITIOENR'S EXHIBITS:

EXT.P1: COPY OF THE EXECUTION PETITION FILED BY THE RESPONDENT IN O.S. NO.275/96 MUNSIFF COURT, KOZHIKODE DATED MAY 2004

EXT.P2: COPY OF THE COUNTER FILED BY THE PETITIOENR IN THE EXECUTION PETITION DATED 5.4.2005

EXT.P3: COPY OF THE ORDER IN E.P. NO.196/04 IN O.S. NO.275/96 ON THE FILE OF THE PRINCIPAL MUNSIFF-1 KOZHIKODE DATED 6.7.2005

EXT.P4: COPY OF E.A. NO.777/05 IN E.P. NO.196/04 FOR CONDONING THE DELAY IN FILING THE PETITION TO SET ASIDE THE EX-PARTE ORDER DATED 22.11.2005.

EXT.P5: COPY OF THE PETITION E.A. NO.778/05 IN E.P. NO.196/04 TO SET ASIDE EXT.P3 ORDER DATED 22.11.2005

EXT.P6: COPY OF the ORDER IN E.A. NO.778/05 IN E.P. NO.196/04 IN O.S. NO.275/96 DATED 16.2.2006

EXT.P7: COPY OF THE ORDER IN E.A. NO.777/05 IN E.P. NO.196/04 N O.S. NO.275/96 ON THE FILE OF MUNSIFF-1 PRINCIPAL KOZHIKODE DATED 16.2.2006

EXT.P8: COPY OF THE JUDGMENT IN UNNUMBERED C.M.A. ON THE FILE OF DISTRCT JUDGE KOZHIKODE DATED 26.7.2006

/TRUE COPY/

P.A. TO JUDGE

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 26084 of 2006

Dated this the 13th day of July , 2007

JUDGMENT

The Judgment debtor, who is said to be an octogenarian, is aggrieved by Ext.P3 order under which, on finding that he has violated the decree of injunction passed against him, the court below ordered the removal of a shed put up by him in violation of the decree and also his arrest and detention in civil prison. His attempt to have Ext.P3 set aside was also not successful. Ext.P5 is the petition to set aside Ext.P3, which is passed ex parte and Ext.P7 is the order in the application for condoning the delay in the matter of filing Ext.P5. The view taken by the learned Munsiff that the Execution Court has no power to condone the delay is correct. But this court in supervisory jurisdiction is fully empowered to pass any orders for doing injustice notwithstanding the delay.

2. Sri.P.V.Kunhikrishnan, the learned counsel for the petitioner submits that as far as the first direction in Ext.P3 that an Amin is to be deputed for removing the shed which was put

up in violation of the decree of injunction is concerned, the said direction has already been complied with. The shed has been removed, so submits the learned counsel. This is clear from Ext.P6 itself. The question that survives is whether the petitioner should be directed to undergo imprisonment in civil prison. Even though the respondent was served with notice, he does not enter appearance to resist the prayers in the writ petition. Admittedly, Ext.P3 order was passed ex parte against the petitioner. The petitioner is a very old man, who according to his counsel, is ailing due to various diseases.

3. Under the above circumstances, I set aside Ext.P3, P6 and P7 and direct the learned Munsiff to take a fresh decision on the question of sending the petitioner to civil prison with notice to the respondent. The learned Munsiff shall take into account all relevant considerations which should normally weigh with courts while deciding whether or not to detain persons to civil prison.

PIUS C. KURIAKOSE,
JUDGE.

dpk